



January 24, 2007

Legislative Digest

H.Res. 78 - Amending the Rules of the House of Representatives to permit Delegates and the Resident Commissioner to the Congress to cast votes in the Committee of the Whole House on the state of the Union

Floor Situation:

H.Res. 78 was introduced by Representative Steny Hoyer on January 19, 2007. It has not been reported by any committee.

H.Res. 78 will be considered under a rule that provides for one hour of debate equally divided between the Chairman and Ranking Member of the Rules Committee. The rule waives all points of order against the consideration of H.Res. 78 and provides for one motion to recommit *without instructions*.

The rule makes in order an amendment by Representative Mark Kirk with twenty minutes of debate equally divided and waives all points of order against its consideration.

**Note: Representative Kirk withdrew his amendment in a formal request to the Rules Committee. Ranking Member David Dreier offered an amendment to the rule that would have accepted the withdrawal of the Kirk Amendment, thus following the normal practice of allowing a Member to withdraw an amendment to the Rules Committee upon request. On a 9 to 3 party line vote, the Rules Committee rejected this amendment to the rule by Ranking Member David Dreier.*

Summary:

H.Res. 78 changes the rules of the House to allow non-Members - the Delegates from American Samoa, Guam, the Virgin Islands and Washington DC, as well as the Resident Commissioner from Puerto Rico - to vote in the Committee of the Whole.

In the event that the votes of the Delegates and the Resident Commissioner decide the outcome of a vote in the Committee of the Whole, an automatic revote is to occur in the full House, where the Delegates and Resident Commissioner are not allowed to cast votes.

**Note: Puerto Rico has a Resident Commissioner instead of a Delegate. In the 110th Congress, the main difference between the four Delegates and the Resident Commissioner is that the Resident Commissioner from Puerto Rico is elected to a four year term.*

Background:

The Committee of the Whole consists of every Member of the House of Representatives. House rules require that most measures first be considered by the Committee of the Whole including revenue, appropriations, and authorization measures.

The primary purpose of the Committee of the Whole is to expedite consideration of legislation. Amendments are considered under a “five minute rule” for debate. The Committee of the Whole also has a smaller quorum requirement than the full House (100 compared to 218).

The first Delegate was appointed to a select committee in 1795. In 1871, the first delegate was appointed to a standing committee. Delegates had the ability to participate in debate on legislation but not to vote in committee.

That changed in 1970, when the Resident Commissioner from Puerto Rico was given a vote in standing committees. There was some discussion during debate on this measure about whether it would set the precedent for extending a vote to Delegates/ Resident Commissioners in the Committee of the Whole. Representative Tom Foley (Speaker of the House of Representatives from 1989 to 1995) commented at the time:

“Now it is very clear, as the Resident Commissioner has said, that a constitutional amendment would be required to give the Resident Commissioner a vote in the Committee of the Whole or the full House.”

The decision to give the Resident Commissioner from Puerto Rico the right to vote in standing committees was not part of a House rules change, but instead part of the Legislative Reorganization Act of 1970 (PL 91-510) signed into law by President Nixon on October 26, 1970.

From 1959 to 1970 Puerto Rico was the only territory authorized to send representation to the Congress. By 1978, Guam, the Virgin Islands, and finally American Samoa were given the ability to elect Delegates with the same legislative powers as the Resident Commissioner from Puerto Rico. Washington DC was also given the right to send a Delegate.

1993 Rules Change Allowing Delegates to Vote in Committee of the Whole

After the 1992 Congressional elections resulted in a ten seat loss for the Democrats, Delegates were given the right to vote in the Committee of the Whole as part of the Democratic rules package for the 103rd Congress. All five Delegates/ Resident Commissioner were Democrats.

In objecting to the rules change, Ranking Member of the Rules Committee Gerald Solomon pointed out:

“The Committee of the Whole is not a citizens’ advisory commission to propose legislative solutions; it is, in fact, the House exercising its most basic responsibilities under the Constitution to make the laws of the land.”

Therefore it was argued Delegates and the Resident Commissioner are not eligible to vote in Committee of the Whole since by the wording of the Constitution they do not meet some of the requirements for being a Member of the House of Representatives.

Article I, Section 2 of the Constitution states that the “House of Representatives shall be composed of Members chosen every second Year by the People of the several States...” Guam, Puerto Rico, the Virgin Islands, American Samoa, and Washington DC are not states. In addition, the Resident Commissioner from Puerto Rico is elected to a four year term instead of the two-year term for Members of Congress required by the Constitution.

Furthermore, the Delegates and Resident Commissioner (with the exception of the Delegate from Washington DC) represent constituencies that would not be impacted by changes in tax laws in the same way as the constituencies of Members of Congress are. During debate on this rules change, Republicans noted the unique rule the Constitution gives to the House of Representatives on spending and tax measures. These measures are considered within Committee of the Whole.

The Republicans protested the Rules change using a variety of parliamentary tactics. Representative Gerald Solomon, Ranking Member of the Rules Committee, made a motion to refer this issue to a five-Member committee to be selected by the Speaker to study the constitutionality of non-Member voting in the Committee of the Whole. That motion was tabled by a vote of 176 to 224, with 10 Democrats voting against tabling the motion.

The rules package for the 103rd Congress, with this provision included, passed by a margin of 221 to 199 with 27 Democrats voting against the rules package. The motion to recommit, which included instructions to delete the Delegate/ Resident Commissioner voting in Committee of the Whole provision, was defeated by a vote of 187 to 238 with 14 Democrats voting in favor of the motion to recommit.

The 1993 Rules Change and the Courts

A group of Republican Members of Congress filed a lawsuit challenging the constitutionality of the rules change that allowed Delegates/ Resident Commissioner to

vote in the Committee of the Whole. Judge Harold H. Greene of the U.S. District Court for the District of Columbia upheld the rules change because it included the automatic revote provision. But the Court concluded that without the automatic revote provision, the rules change “would have been plainly unconstitutional” because of the role the Committee of the Whole plays within the House of Representatives.

In 1995, after the Republicans won the majority, this provision was eliminated as part of the rules package for the 104th Congress.

In the 110th Congress, four out of the five Delegates/ Resident Commissioner caucus with the Democratic Party. The populations of the five constituencies vary dramatically (per the 2000 Census):

- Puerto Rico population: **3.8 million**
- American Samoa population: **57,000**
- Washington DC population: **572,000**
- Guam population: **155,000**
- Virgin Islands population: **109,000**

To put these figures in perspective, the largest Congressional district based on the 2000 census is Montana (At-Large) with a population of 905,000. The smallest is Wyoming (At-Large) with a population of 495,000.

Additional Information:

[CRS Report RL32200: Debate, Motions, and Other Actions in the Committee of the Whole](#)

[CRS Report RL32340: Territorial Delegates to the U.S. Congress: Current Issues and Historical Background](#)

Staff Contact:

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